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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELVIS MIRZAIE, an) Case No. CV 15-04361 DDP (FFMx)
individual; EDISON MIRZAIE,)
an individual; ROMI MIRZAIE,)
an individual, on behalf of)
themselves and all others) **ORDER GRANTING DEFENDANTS' MOTION**
similarly situated,) **TO DISMISS**
Plaintiffs,)
v.)
MONSANTO COMPANY, a Delaware) [Dkt. No. 8]
corporation,)
Defendant.)
_____)

Presently before the Court is Defendant's Motion to Dismiss Plaintiff's Complaint. (Dkt. No. 8.) Having considered the submissions of the parties, the Court grants the motion and adopts the following order.

I. Background

On April 20, 2015, Plaintiff filed an action in Los Angeles Superior Court alleging that Defendant violated California's False Advertising Law, Cal. Bus. & Prof. Code § 17500. (Compl., Dkt. No. 1, Ex. 1.) Defendant removed the action to this court.

1 Plaintiffs allege that the label on Defendant's weed killing
2 product, Roundup, is false and misleading to consumers. (Compl., ¶¶
3 20, 21, 36, 42.) Plaintiffs allege that the Roundup label, which
4 reads, "Glyphosate targets an enzyme found in plants but not in
5 people or pets," is false because the enzyme "EPSP synthase,"
6 though not produced by humans, is produced by bacteria ("gut
7 bacteria") found in human and animal digestive systems. (Id. at ¶¶
8 20, 35, 36, 42.)

9 Plaintiffs allege that because Glyphosate targets EPSP
10 synthase, it kills both weeds and gut bacteria. (Id. at ¶ 25.)
11 Plaintiffs allege that plants absorb Glyphosate through topical
12 exposure, which results in a build up of Glyphosate in human tissue
13 from consumption of crops treated with Glyphosate. (Id. at ¶¶ 26-
14 30.) Plaintiffs allege that Glyphosate in human tissue kills the
15 gut bacteria that regulate digestive and immune system
16 functions. (Id. at ¶¶ 33.)

17 Plaintiffs allege that Plaintiffs purchased Roundup with the
18 belief that Glyphosate targets enzymes found only in backyard
19 weeds.¹ (Id. at ¶ 38.) Plaintiffs allege that they detrimentally
20 relied on Defendant's claims because, although Plaintiffs were led
21 to believe that Roundup would not affect them, it in fact kills gut
22 bacteria that play a role in Plaintiffs' health. (Id. at ¶ 37, 39.)
23 Finally, Plaintiffs allege that Defendant continues to sell Roundup
24 with the alleged false and misleading label. (Id. at ¶ 40.)

25 **II. Legal Standard**

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27 ¹ Although many of the Complaint's allegations concern the use
28 of Glyphosate in farming as a weedkiller and food ripener,
Plaintiffs do not appear to allege that they grow crops or
themselves used Roundup on any consumable plant.

1 A complaint will survive a motion to dismiss when it contains
2 "sufficient factual matter, accepted as true, to state a claim to
3 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
4 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
5 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
6 "accept as true all allegations of material fact and must construe
7 those facts in the light most favorable to the plaintiff." Resnick
8 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
9 need not include "detailed factual allegations," it must offer
10 "more than an unadorned, the-defendant-unlawfully-harmed-me
11 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
12 allegations that are no more than a statement of a legal conclusion
13 "are not entitled to the assumption of truth." Id. at 679. In
14 other words, a pleading that merely offers "labels and
15 conclusions," a "formulaic recitation of the elements," or "naked
16 assertions" will not be sufficient to state a claim upon which
17 relief can be granted. Id. at 678 (citations and internal
18 quotation marks omitted).

19 "When there are well-pleaded factual allegations, a court should
20 assume their veracity and then determine whether they plausibly
21 give rise to an entitlement of relief." Id. at 679. Plaintiffs
22 must allege "plausible grounds to infer" that their claims rise
23 "above the speculative level." Twombly, 550 U.S. at 555.
24 "Determining whether a complaint states a plausible claim for
25 relief" is a "context-specific task that requires the reviewing
26 court to draw on its judicial experience and common sense." Iqbal,
27 556 U.S. at 679.

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1 **III. Discussion**

2 Defendants contend, as a threshold issue, that Plaintiffs'
3 claims, which revolve around a request for injunctive relief, are
4 preempted by the Federal Insecticide Fungicide and Rodenticide Act
5 ("FIFRA").² "The Supremacy Clause of the Constitution provides
6 that any state law conflicting with federal law is preempted by the
7 federal law and is without effect." Nathan Kimmel, Inc. v.
8 DowElanco, 275 F.3d 1199, 1203 (9th Cir. 2002); U.S. Const. art.
9 VI, cl. 2. "Preemption may be either express or implied." Nathan
10 Kimmel, 275 F.3d at 1203. Courts must look to congressional intent
11 to determine whether state law is preempted by a federal statute.
12 Id.

13 FIFRA, originally enacted in 1947, was amended in 1972 to
14 convert it "from a labeling law into a comprehensive regulatory
15 statute." Ruckelshaus v. Monsanto Co., 467 U.S. 986, 991 (1984).
16 "As amended, FIFRA regulate[s] the use, as well as the sale and
17 labeling, of pesticides; regulate[s] pesticides produced and sold
18 in both intrastate and interstate commerce; [and] provide[s] for
19 review, cancellation, and suspension of registration." Id. at
20 991-92. FIFRA addresses the authority of states to regulate
21 pesticides as follows:

22 (a) In general

23 A State may regulate the sale or use of any federally
24 registered pesticide or device in the State, but only if
25 and to the extent the regulation does not permit any sale
26 or use prohibited by this subchapter.

27 (b) Uniformity

28 ² California Business and Professions Code § 17500 provides
only for injunctive relief, not damages, to private individuals.
See Chern v. Bank of America, 15 Cal.3d 866m 875 (1976).

1 Such State shall not impose or continue in effect any
2 requirements for labeling or packaging in addition to or
2 different from those required under this subchapter.

3 7 U.S.C. § 136v.

4 In Bates v. Dow Agrosciences LLC, the Supreme Court addressed
5 whether 7 U.S.C. § 136v preempted certain state law claims,
6 including tort claims, fraud, breach of warranty, and violation of
7 the Texas Deceptive Trade Practices-Consumer Protection Act.
8 Bates v. Dow Agrosciences LLC, 544 U.S. 431, 435 (2005). The
9 Court held that state law rules, whether statutory or derived from
10 common law, is preempted if two conditions are met. "First, [the
11 state law] must be a requirement for labeling or packaging
12 Second, it must impose a labeling or packaging requirement that is
13 in addition to or different from those required under [FIFRA]." Id.
14 at 444 (internal quotation marks omitted). FIFRA forbids pesticide
15 labels from bearing any statement that is "false or misleading in
16 any particular." 7 U.S.C. §136(q)(1)(A).

17 There can be no dispute that Plaintiffs seek to impose a
18 labeling requirement different or in addition to that required
19 under FIFRA, as the Roundup label to which Plaintiffs object, and
20 which Plaintiffs seek to alter, was approved by the Environmental
21 Protection Agency in 2008. (Def.'s Mot. Dismiss Ex. 2 at 1,17.)
22 The only question, therefore, is whether the injunctive relief
23 Plaintiffs seek would constitute a requirement for labeling or
24 packaging. The Ninth Circuit, even prior to Bates, answered this
25 question in the affirmative in Nathan Kimmel. There, the court
26 held that "an injunction imposed against a manufacturer to change
27 its [EPA-approved] label would represent a state-mandated labeling
28 requirement and would therefore be preempted." Id. The court

1 reasoned that the injunction would be "an obstacle to the
2 accomplishment and execution of the full purposes and objectives of
3 Congress in enacting FIFRA." Id. at 1208 (quoting Freightliner
4 Corp. v. Myrick, 514 U.S. 280, 287 (1995)). As further explained
5 in Bates, "the term 'requirements' in § 136v(b) [FIFRA] reaches
6 beyond positive enactments, such as statutes and regulations, to
7 embrace common-law duties." Bates, 544 U.S. at 443. Here, because
8 the injunction Plaintiffs seek under Section 17500 would require
9 Defendant to alter its label, Plaintiffs' request falls squarely
10 within the definition of "requirements." Accordingly, Plaintiffs
11 claims are preempted by FIFRA.³

12 **IV. Conclusion**

13 For the reasons stated above, Defendant's Motion is GRANTED.
14 The Complaint is DISMISSED, with prejudice.

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18 IT IS SO ORDERED.

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21 Dated: January 12, 2016

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28 ³ The court notes that Plaintiffs' Opposition does not cite to, let alone make any argument regarding, Bates, Nathan Kimmel, or any other case authority.



DEAN D. PREGERSON
United States District Judge